



## CLOSED CASE SUMMARY

ISSUED DATE: MAY 10, 2021

FROM: DIRECTOR ANDREW MYERBERG  
OFFICE OF POLICE ACCOUNTABILITY

CASE NUMBER: 2020OPA-0705

### **Allegations of Misconduct & Director's Findings**

Named Employee #1

Allegation(s):		Director's Findings
# 1	8.200 - Using Force 1. Use of Force: When Authorized	Not Sustained (Lawful and Proper)
# 2	5.001 - Standards and Duties 10. Employees Shall Strive to be Professional	Not Sustained (Unfounded)

***This Closed Case Summary (CCS) represents the opinion of the OPA Director regarding the misconduct alleged and therefore sections are written in the first person.***

### **EXECUTIVE SUMMARY:**

The Complainant, a business owner, alleged that an SPD employee used excessive force and acted unprofessionally to one of her employees when investigating a burglary reported at her business.

### **ADMINISTRATIVE NOTE:**

This case was designated as an Expedited Investigation. This means that OPA, with the Office of Inspector General's review and approval, believed that it could reach and issue recommended findings based solely on its intake investigation and without interviewing any involved officers.

In addition, this case involves unknown SPD employees. Given that these employees have not been identified, the 180-day deadline is tolled. Accordingly, OPA administratively sets the date of this DCM as the expiration of the 180-day deadline.

### **ANALYSIS AND CONCLUSIONS:**

#### **Named Employee #1 - Allegation #1**

#### ***8.200 - Using Force 1. Use of Force: When Authorized***

On April 7, 2020, at around 9:54 p.m., an individual called 911 to report a possible burglary in progress at a café near the caller's residence. The 911 caller stated that she saw a person – referred to hereafter as the Subject – attempting to pry open the café's windows and doors. The call was coded as a Priority 1 potential in-progress burglary. It appeared that, in total, 15 SPD officers, three sergeants, and a K9 unit were logged to the incident.

Body Worn Video (BWV) fully captured the incident. When officers arrived, they formed a perimeter around the café. The Subject was in the building, and three officers were tasked with contacting him. One officer carried a taser,



while two provided lethal cover with a handgun and a rifle. A sergeant in command of the scene accompanied the contact team.

BWV showed the sergeant call into the business for the Subject to come out. The Subject did so, and officers pointed their weapons in his direction, ordering him to put his hands up. The Subject did so. Officers gave the Subject commands to get on his knees, then to lie down and place his hands out “like an airplane,” and not to move for any reason, which is the standard directive given by SPD during an arrest of this type. The Subject followed all commands. The total time that he was on the ground was 52 seconds.

Next, officers directed him to face the building and stand up. The Subject did so. One of the officers directed him to walk backwards toward the three officers in the contact team. When he was close enough, two officers moved forward and handcuffed him. The Subject stated twice that he worked at the business. One of the officers escorted the Subject to his patrol vehicle where he was searched for weapons incident to arrest (none were found). He was then read Miranda warnings.

An officer questioned the Subject about why he was in the café. The Subject stated that he was an employee and was closing. The officer said that if true, the incident sounded like a “big misunderstanding.” He said that if no other intruders were found, they would let the Subject go in a few minutes. The officer said that the response was due to the “nature of the call the way it came in,” presumably referencing the Priority 1 coding, and the Subject responded that it was “fair enough.” The Subject provided his driver’s license, and officers ran it in MDT. He also gave officers permission to search his backpack for keys to the café.

After several minutes, an officer referred to hereafter as Witness Officer #1 (WO#1) arrived. WO#1 spoke to the officer running the MDT check and determined that the Subject had no criminal history. The officer also told WO#1 that a K9 unit was checking for additional suspects. WO#1 spoke to the sergeant in command and volunteered to be the primary officer because it was in his assigned sector. Shortly after, the building was reported clear.

WO#1 spoke to the Subject. The Subject explained that he had been closing and was the only employee working due to COVID-19. He gave the name of his immediate supervisor and said that her number was in his phone. WO#1 asked about the report that someone had been pulling on the windows and doors. The Subject stated that he always checked the doors and windows at least twice. WO#1 said that he was going to call the Subject’s supervisor and that if everything was as the Subject said, he was “really sorry about this, by the way.” The Subject said, “no, you’re fine.”

WO#1 cleared the other officers from the scene and verified that one of them was calling the Subject’s supervisor. Ultimately, officers verified that the Subject was an employee and was permitted on the premises. The sergeant spoke to the Subject and explained the reason why his arrest was conducted the way it had been. They discussed that multiple burglaries had occurred in the area and that the neighbors appeared to be aware of it, causing the 911 call. Shortly after, one of the other officers unhandcuffed the Subject, and apologized for the invasiveness of the detention. The Subject also acknowledged this apology, and these interactions were captured on WO#1’s BWV.

Several months later, the Subject’s supervisor (the Complainant in this case) contacted OPA. She alleged over email that police “cordoned off the block” and called for K9s, and that “[t]hree police officers, with guns drawn, forced my employee outside and onto the pavement.” She stated that the officers did not return the Subject’s ID to him and that it was later discovered at the café by a customer. The Complainant stated that the Subject no longer felt safe at work and sought counseling. She alleged that officers’ response with “canines and guns



drawn” constituted escalation and that officers must have been trained to “attack fast and never apologize.” OPA attempted to contact the Complainant, but she did not return requests for follow-up. OPA interpreted this as an allegation of excessive force and unprofessionalism by one or more SPD employees, and this investigation ensued.

SPD Policy 8.200(1) requires that force used by officers be reasonable, necessary and proportional. Officers shall only use “objectively reasonable force, proportional to the threat or urgency of the situation, when necessary, to achieve a law-enforcement objective.” Whether force is reasonable depends “on the totality of the circumstances” known to the officers at the time of the force and must be balanced against “the rights of the subject, in light of the circumstances surrounding the event.” (SPD Policy 8.050.) The policy lists a number of factors that should be weighed when evaluating reasonableness. (*See id.*) Force is necessary where “no reasonably effective alternative to the use of force appeared to exist” and “the amount of force used was reasonable to effect the lawful purpose intended.” (*Id.*) Lastly, the force used must be proportional to the threat posed to the officer. (*Id.*)

As a threshold matter, OPA apologizes for what the Subject went through. While unbeknownst to the officers at the time, he was innocent but, unfortunately, was subjected to a deprivation of his liberty and, clearly, a frightening experience.

The evidence indicates that, at the time officers responded to the café, they were under the impression, based on information provided by the 911 caller, that there was an ongoing burglary. They believed that the suspect had forced entry and was in the café at the time. Notably, this was not a general call of potential criminality. The officers received specific information concerning an individual who had pried the windows open and had then made entry into the building. What the officers did not know, however, was that the individual who was in the café was the Subject, who was employed there.

Based on the information they had, the officers approached the incident consistent with their training. They provided loud orders to the individual within the café, they directed the individual to come outside, and they conducted a high-risk arrest. This included drawing their firearms and a Taser prior to the Subject being handcuffed. It was not until after the handcuffing was effectuated that the Subject told the officers that he was employed by the café. The officers verified this with the Complainant and released the Subject from custody. The Subject confirmed to officers that he was “pressure testing” the windows, which was consistent with the conduct described by the 911 caller.

When assessing the force used by the officers, OPA must consider what the officers knew at the time, not what they were aware of only after the incident. Moreover, OPA must evaluate whether the officers acted reasonably under the circumstances facing them and given what they were aware and cannot apply 20/20 hindsight.

Using this rubric, OPA finds that the force used by the officers during this incident was consistent with policy. First, given the suspected crime and pursuant to their training, the officers were permitted to point their firearms at the Subject when he exited the café. This is because individuals engaged in suspected forced entry burglary may be armed and officers are trained to draw their firearms to protect against this risk. Again, at that time, the officers reasonably believed that the Subject was involved in a burglary and did not know that he was employed by the café. Second, the officers were also permitted to handcuff the Subject as they investigated the incident. As discussed above, the officers did not know that the Subject was employed by the café until after the handcuffing was effectuated. No other force was used by the officers.



In finding that the force was consistent with policy, OPA recognizes how traumatic this situation must have been for the Subject. OPA does not discount what he experienced but finds that SPD policy was not violated given what the officers were aware of at the time.

For these reasons, OPA recommends that this allegation be Not Sustained – Lawful and Proper.

Recommended Finding: **Not Sustained (Lawful and Proper)**

**Named Employee #1 - Allegation #2**

***5.001 - Standards and Duties 10. Employees Shall Strive to be Professional***

SPD Policy 5.001-POL-10 requires that SPD employees “strive to be professional.” The policy further instructs that “employees may not engage in behavior that undermines public trust in the Department, the officer, or other officers” whether on or off duty. (SPD Policy 5.001-POL-10.) The policy further states the following: “Any time employees represent the Department or identify themselves as police officers or Department employees, they will not use profanity directed as an insult or any language that is derogatory, contemptuous, or disrespectful toward any person.” (*Id.*) Lastly, the policy instructs Department employees to “avoid unnecessary escalation of events even if those events do not end in reportable uses of force.” (*Id.*)

The Complainant provided a number of reasons for why she felt that SPD officers were unprofessional during this incident. She said that officers continually yelled at the Subject, that they forced him down to the pavement and handcuffed him, that they pointed their firearms in his face with their fingers on the trigger, that they did not apologize to him, and that they took his identification and did not directly return it to him.

The BWV provides insight into virtually all of these allegations. First, officers did loudly give directions to the Subject when he was inside of the café and when he first exited. However, the video showed that, as soon as he exited and was compliant, they stopped doing so. OPA found no evidence that officers raised their voices or yelled aside from providing these directions.

Second, the officers did not physically force the Subject to the ground and, instead, asked him to get on the ground as part of the high-risk arrest. There was also no evidence from the various BWV that any of the officers had their fingers on the triggers of their firearms. Moreover, while the officers raised their firearms at times, they did not appear to point the firearms in the Subject’s face as asserted by the Complainant.

Second, after his identity was verified, multiple employees apologized to the Subject for his treatment, attempted to explain the reason for it, and the Subject appeared to acknowledge and accept these apologies and explanations.

Third, while it appeared from the BWV that the officers did not directly provide the Subject’s identification back to him and, instead, left it in the store, it did not appear that this was intentional.

Fourth, OPA does not find that the general response to the incident was unprofessional. Best practices in responding to these types of calls is to have a larger response. This is purposed to de-escalate situations and reduce the need for officers to use physical force to secure compliance.



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As discussed above, it is clear that the Subject had a terrifying experience due to no fault of his own. This was because of the officers' good faith, but ultimately incorrect, reliance on the 911 call placed. However, when evaluating the totality of the evidence, there is no indication that any of the officers on scene acted unprofessionally. Accordingly, OPA recommends that this allegation be Not Sustained – Unfounded.

Recommended Finding: **Not Sustained (Unfounded)**